

Assembly Bill No. 2687

CHAPTER 750

An act to add Section 11352.1 to, and to add and repeal Section 101070 of, the Health and Safety Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1998. Filed
with Secretary of State September 23, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2687, Gallegos. Healing arts: dispensing drugs.

Existing law authorizes the California State Board of Pharmacy to take action against all persons guilty of violating the Pharmacy Law. That law prohibits the sale of specified drugs without a prescription by a licensed practitioner and dispensed by a person licensed to dispense prescription drugs.

This bill would authorize a local health officer who determines that a person within his or her jurisdiction is unlawfully dispensing or furnishing specified drugs requiring a prescription, or a dangerous drug or device, or a controlled drug, to take a specified action, including receiving and investigating complaints from the public, other licensees, or health care facilities, issuing an order to the person to immediately cease and desist from the unlawful activity, and ordering the closure of the business operated, managed, or owned by that person. The bill would also authorize a local health officer to order the immediate closure of a business upon reasonable suspicion that the business poses an immediate threat to public health, welfare, or safety, as defined. The bill would require that any person whose business is closed as a result of local health officer action under this act be given notice and a hearing to show cause why closure is unwarranted.

Existing law makes it a misdemeanor for any unlicensed person to knowingly dispense dangerous drugs or dangerous devices, as defined, punishable by a fine of not less than \$200 and not more than \$2,000 or by imprisonment of not less than 30 days and not exceeding 6 months, or by both that fine and imprisonment.

This bill would make it a misdemeanor for any unlicensed person to knowingly dispense or furnish a dangerous drug or dangerous device, or to knowingly own, manage, or operate a business that dispenses or furnishes a dangerous drug or dangerous device, when that business is not licensed to dispense or furnish such products. Upon conviction, each violation would be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that fine and imprisonment. Upon a 2nd

or subsequent conviction, each violation would be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 11352.1 is added to the Health and Safety Code, to read:

11352.1. (a) The Legislature hereby declares that the dispensing and furnishing of prescription drugs, controlled substances, and dangerous drugs or dangerous devices without a license poses a significant threat to the health, safety, and welfare of all persons residing in the state. It is the intent of the Legislature in enacting this provision to enhance the penalties attached to this illicit and dangerous conduct.

(b) Notwithstanding Section 4321 of the Business and Professions Code, and in addition to any other penalties provided by law, any person who knowingly and unlawfully dispenses or furnishes a dangerous drug or dangerous device, as defined in Section 4022 of the Business and Professions Code, or who knowingly owns, manages, or operates a business that dispenses or furnishes a dangerous drug or dangerous device as defined in Section 4022 of the Business and Professions Code without a license to dispense or furnish these products, shall be guilty of a misdemeanor. Upon the first conviction, each violation shall be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that fine and imprisonment. Upon a second or subsequent conviction, each violation shall be punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

SEC. 2. Section 101070 is added to the Health and Safety Code, to read:

101070. (a) (1) The Legislature hereby finds and declares that the dispensing or furnishing of drugs requiring a prescription pursuant to Section 11470, a controlled substance as defined in Section 4021 of the Business and Professions Code, or a dangerous drug or a dangerous device as defined in Section 4022 of the Business



and Professions Code, without a license poses a significant threat to the public health, safety, and welfare of all residents of the state. In recent years, the public has become increasingly exposed to a proliferation of persons who engage in these illegal or dangerous acts.

(2) The Legislature further finds and declares that extraordinary measures are needed to control this burgeoning problem. Therefore, the occasional enlistment of local health officers in regulatory and enforcement functions normally reserved to the state is appropriate and necessary in order to protect the health, safety, and welfare of all persons of this state.

(3) Notwithstanding the foregoing, nothing contained in this section shall be construed as limiting or supplanting the authority of the state agencies charged with the regulation of the practice of pharmacy.

(b) Whenever a local health officer determines that there exists in his or her jurisdiction any person who, without a license, is dispensing or furnishing drugs requiring a prescription pursuant to Section 111470, a controlled substance as defined in Section 4021 of the Business and Professions Code, or a dangerous drug or a dangerous device as defined in Section 4022 of the Business and Professions Code, the local health officer may take action against such person. This action shall include, but not be limited to:

(1) Receiving and investigating complaints from the public, from other licensees or from health care facilities that a person is engaging in any or all of the activity set forth in this subdivision. In conducting any investigation pursuant to this paragraph, the local health officer shall have the assistance of, and be accompanied by, a licensed pharmacist. The local health officer shall provide the Board of Pharmacy, and any other state agency charged with jurisdiction over the activity set forth in this subdivision, with a copy of all complaints received pursuant to this paragraph.

(2) Issuing an order to the person to immediately cease and desist from the unlawful activity described in this subdivision, after confirming that the person is engaging in any or all of the activity set forth in this subdivision, and determining that the person has not been convicted of engaging in that activity pursuant to Section 11352.1 or any other applicable provision of law. In issuing the order, the local health officer shall notify the person that the activity is illegal in the State of California. In the event the local health officer determines that any or all of the items described in this subdivision must be confiscated, in addition to the cease and desist order, the local health officer shall enlist the aid of local law enforcement to execute confiscation of those items.

(3) Order the closure of the business, if any, operated, managed, or owned by the person after confirming that the person is engaging in any or all of the activity set forth in this subdivision, and determining whether the person has previously been convicted of

engaging in that activity pursuant to Section 11352.1 or any other applicable provision of law. If the public health officer has a reasonable suspicion that the operation of a business poses an immediate threat to public health, welfare, or safety, the business may be ordered closed immediately while the hearing described in subdivision (c) is pending. Immediate danger to the public health, welfare, or safety includes, but is not limited to, evidence that the person is providing, selling, or distributing drugs that require a prescription, or dangerous drugs, devices, or controlled substances without a license. In the event that the local health officer determines that any or all of the items described in this subdivision must be confiscated in addition to the closure of the business, that officer shall enlist the aid of local law enforcement to execute the confiscation of those items.

(c) (1) Any person engaging in any or all of the activity described in subdivision (b) whose business is closed as a result of action by local health officer pursuant to subdivision (b) shall be entitled to a hearing to show cause why the closure was unwarranted.

(2) Whenever a local health officer orders the closure of a business pursuant to subdivision (b), the local health officer shall immediately issue to the owner a notice setting forth the acts or omissions with which the owner is charged, specifying the pertinent code section, and informing the owner of the right to a hearing, if requested, to show cause why the business should not be closed.

(3) A written request for a hearing shall be submitted by the person to the local health officer within 15 calendar days of closure. A failure to request a hearing within 15 calendar days of closure shall be deemed a waiver of the right to a hearing.

(4) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing; however, when circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the hearing process. Upon written request of the person, the hearing officer may postpone any hearing date, if circumstances warrant the postponement.

(5) The hearing officer shall issue a written notice of decision to the person within five working days following the hearing. In the event the hearing officer determines that the closure was warranted, the notice shall specify the acts or omissions with which the person is charged, and shall state that the business shall remain closed permanently. Evidence that the person engaged in any or all of the activity set forth in subdivision (b) shall constitute prima facie evidence that permanent closure is warranted. Any business still operating shall close immediately upon receipt of the written decision ordering closure.

(d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to safeguard the health and welfare of the people of this state by providing for increased regulatory and enforcement activities relating to the unauthorized practice of pharmacy at the earliest possible time, it is necessary that this act take effect immediately.

